



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,561	01/23/2004	Carl Arthur Dzenis	14599	3194
293	7590	01/04/2006	EXAMINER	
Ralph A. Dowell of DOWELL & DOWELL P.C. 2111 Eisenhower Ave Suite 406 Alexandria, VA 22314			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/762,561	<b>Applicant(s)</b> DZENIS, CARL ARTHUR	
	<b>Examiner</b> Darren W. Ark	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5-18,20-22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-18,20-22,24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 5, 6, 20-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Swanningson 3,898,758.

Swanningson discloses a generally egg shaped body (12) wherein the slopes (see Fig. 2) of the top portion from the center line to the front and back are greater than the slope of the bottom portion from the center line to the front and back; wherein the slope of the top portion from the center line to the back is greater than the center line to the front (slopes toward front have more convex curvature) and the slope of the bottom from the center line to the back is greater than the center line to the front (rear one of 28 defines greater slope); the outer surface being faceted (see various indentations 24, 29 in Figs. 5, 6); a mouth (12 in shape of a fish; mouth not particularly claimed); the lead core (12 made of lead) generally rectangular shaped (29 defines parallel sides like a rectangle); a hook (31).

Art Unit: 3643

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lucas 5,349,776.

Lucas discloses an egg shaped body (28) wherein the slopes of the top portion (see Figs. 1, 2) from the center line to the front and back are greater than the slope of the bottom portion from the center line to the front and back; the slope from the top portion from the center line to the back is greater than the center line to the front and the slope of the bottom portion from the center line to the back is greater than the center line to the front (both top and bottom slopes toward back are greater since they terminate in a more vertical manner at end of 40); a faceted surface with a facets that are concave (indentations 76).

4. Claims 20, 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Webel 4,945,669.

Webel discloses an egg shaped body (18 in Figs. 1, 2) wherein the slopes of the top portion (bottom in Fig. 1; the top and bottom portions are dependent upon the point of reference) from the center line to the front and back are greater than the slope of the bottom portion from the center line to the front and back.

In regard to claims 20 and 22, Webel discloses a body (18) with a lead core (see Abstract) therein; a hook (12).

5. Claims 20, 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Smith 4,255,890.

Smith discloses a generally egg shaped body (round) wherein the slopes (see Fig. 3) of the top portion from the center line to the front (defined by 30 or 65) and back

Art Unit: 3643

(defined by 70) are greater than the slope of the bottom portion from the center line to the front and back (horizontal).

In regard to claims 20 and 22, Smith discloses a lead core (36); a hook (70).

6. Claims 20, 22 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Angwin 6,640,487.

Angwin discloses a generally egg shaped body (18') wherein the slopes (see Fig. 3A) of the top portion from the center line to the front and back are greater than the slope of the bottom portion from the center line to the front and back.

7. Claims 20-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Luz 4,223,469.

Luz discloses a body (10) with a rectangular lead core (30); a hook (14).

8. Claims 20-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Powell 3,393,465.

Powell discloses a body (11) with a rectangular lead core (13; rectangular in cross section in Fig. 2); a hook (24, 34).

9. Claims 20, 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Potter 5,539,989.

Potter discloses a body (6) with a lead core (see ) and the core being wrapped with aluminum (see col. 3, lines 45-50); a hook (12).

10. Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Buckle et al. 4,713,917.

Buckle et al. discloses a body (see Fig. 8) with a lead core (2) and the core being wrapped with aluminum (6).

11. Claims 20, 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moses 2,155,169.

Moses discloses a body (see Figs. 1-5) with a lead core (15) and the core being wrapped with aluminum (10 dipped in a solution containing a metallic powder preferably aluminum).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 6-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swannington 3,898,758 in view of Schnitzer 2,763,087.

Swannington does not disclose the mouth having 36 teeth, 20 being in the top portion and 16 being in the bottom portion. Schnitzer discloses two rows of teeth on top and bottom portions (42, 44) of a mouth (38, 40). It would have been obvious to a person of ordinary skill in the art to modify the body of Swannington such that it has a mouth with top and bottom teeth in view of Schnitzer in order to simulate a predatory fish and provide additional realism to the lure body. Swannington and Schnitzer do not disclose 36 teeth, 20 being in the top portion and 16 being in the bottom portion. It

Art Unit: 3643

would have been an obvious matter of design choice to employ 36 teeth, 20 being in the top portion and 16 being in the bottom portion, since applicant has not disclosed that by doing so produces any unexpected result or is critical to the design and because a person of ordinary skill in the art would readily provide a sufficient number of teeth for the teeth simulation to be realistic.

In regard to claim 10, Swannington discloses a tail (15) made of stainless steel.

In regard to claims 11-13, Swannington discloses a tail (15) with a hole (38) in the top corner and being close to the edges of the tail, but does not disclose the tail back edge being 10.3 cm, the tail protruding 7.2 cm from a top rear portion of the body and 9 cm from a bottom-rear portion of the body, or the tail top corner hole being 3/8" between .4 cm and .5 cm from the edges of the tail. It would have been an obvious matter of design choice to modify the tail of Swannington such that the tail back edge being 10.3 cm, the tail protruding 7.2 cm from a top rear portion of the body and 9 cm from a bottom-rear portion of the body, and the tail top corner hole being 3/8" between .4 cm and .5 cm from the edges of the tail since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the tail with a size and dimensions that are sufficient to meet the requirements desired by the user.

In regard to claim 14, Swannington discloses the body (12) weighing 12 pounds.

14. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swannington 3,898,758.

Art Unit: 3643

Swanningson discloses the body being approximately 16 inches long and a maximum height of approximately 6 inches, and maximum width of approximately 2 ¼ inches and a stainless steel tail (15), but does not disclose the lead core measuring 22.75 cm x 8.75 cm x 4.5 cm or the entire body measuring 26.4 cm x 10 cm x 4.5 cm or the tail protruding 9.2 cm from a top-rear portion of the body and 9 cm from a bottom-rear portion of the body. It would have been an obvious matter of design choice to modify the lead core such that it is 22.75 cm x 8.75 cm x 4.5 cm and the entire body measures 26.4 cm x 10 cm x 4.5 cm and the tail which protrudes 9.2 cm from a top-rear portion of the body and 9 cm from bottom-rear portion of the body, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core and entire body with a size that is sufficient to meet the requirements desired by the user.

15. Claims 21, 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith 4,255,890.

In regard to claim 21, Smith discloses a cylindrical lead core, but does not disclose a rectangular lead core. It would have been an obvious matter of design choice to make the lead core such that it is rectangular shaped, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core with a shape that will meet the requirements desired by the user.



Art Unit: 3643

In regard to claims 24-26, Smith discloses a body about 20.3 cm long and a diameter of about 3.8 cm and a tail (44) protruding from a top-rear portion of the body a longer distance than from a bottom-rear portion of the body (see Fig. 3), but does not disclose the lead core measuring 22.75 cm x 8.75 cm x 4.5 cm or the entire body measuring 26.4 cm x 10 cm x 4.5 cm or the tail protruding 9.2 cm from a top-rear portion of the body and 9 cm from a bottom-rear portion of the body. It would have been an obvious matter of design choice to modify the lead core such that it is 22.75 cm x 8.75 cm x 4.5 cm and the entire body measures 26.4 cm x 10 cm x 4.5 cm and the tail which protrudes 9.2 cm from a top-rear portion of the body and 9 cm from bottom-rear portion of the body, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core and entire body with a size that is sufficient to meet the requirements desired by the user.

Also in regard to claim 25, Smith discloses a metallic tail (44), but does not disclose the tail being made of steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tail out of steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

16. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angwin 6,640,487.

Art Unit: 3643

Angwin does not disclose the lead core measuring 22.75 cm x 8.75 cm x 4.5 cm or the entire body measuring 26.4 cm x 10 cm x 4.5 cm or the tail protruding 9.2 cm from a top-rear portion of the body and 9 cm from a bottom-rear portion of the body. It would have been an obvious matter of design choice to modify the lead core such that it is 22.75 cm x 8.75 cm x 4.5 cm and the entire body measures 26.4 cm x 10 cm x 4.5 cm and the tail which protrudes 9.2 cm from a top-rear portion of the body and 9 cm from bottom-rear portion of the body, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core and entire body with a size that is sufficient to meet the requirements desired by the user.

17. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter 5,539,989.

Potter does not disclose the lead core measuring 22.75 cm x 8.75 cm x 4.5 cm. It would have been an obvious matter of design choice to make the lead core such that it is 22.75 cm x 8.75 cm x 4.5 cm, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core with a size that is sufficient to meet the requirements desired by the user.

18. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckle et al. 4,713,917.

Buckle et al. does not disclose the lead core measuring 22.75 cm x 8.75 cm x 4.5 cm. It would have been an obvious matter of design choice to make the lead core such

Art Unit: 3643

that it is 22.75 cm x 8.75 cm x 4.5 cm, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core with a size that is sufficient to meet the requirements desired by the user.

19. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moses 2,155,169.

Moses does not disclose the lead core measuring 22.75 cm x 8.75 cm x 4.5 cm. It would have been an obvious matter of design choice to make the lead core such that it is 22.75 cm x 8.75 cm x 4.5 cm, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the lead core with a size that is sufficient to meet the requirements desired by the user.

### ***Response to Arguments***

20. Applicant's arguments filed 12/2/2005 have been fully considered but they are not persuasive.

In regard to applicant's argument that "One of the main advantages...tracking ability...none of the prior art references cited by the Examiner are able to perform the most basic manoeuvre; the ability to turn tight corners...", the Examiner contends that the issue at hand is not whether the prior art devices will perform similarly as to the desired invention but instead is whether the claims reciting the desired invention define and distinguish the desired invention over the prior art devices.

In regard to applicant's argument that "Swanningson...sinker is not generally egg shaped...Lucas is not generally egg shaped...Angwin...pear shaped while the other example is generally fish shaped...", the Examiner contends that applicant has not recited the shape of the desired invention in such a manner which clearly distinguishes its shape from the shape of the prior art device of Swanningson which can be considered as egg shaped since it has generally rounded sides which converge at both of its ends similar to the shape of the desired invention. Lucas has a similar shape clearly shown in Fig. 2 of Lucas. The Examiner also contends that the eggs of different animals may take various forms and shapes that are not all the same exact shape, therefore the term "egg shaped" can be more broadly interpreted that what applicant argues as the meaning of egg shaped.

### ***Conclusion***

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3643

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA